IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.757 OF 2003

Wilson benjamin Castolino ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.S. Patil for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 12, 2007**

ORAL JUDGMENT (PER DESHPANDE, J.):

. This is an appeal by the original accused No.1 who has been convicted by the I Adhoc Additional Sessions Judge, Kalyan for offences under section 302 r/w 34, section 450 r/w 34 and 393 of the I.P.C. We heard the learned Advocate for the accused-appellant Mr.Patil and the learned APP. The conviction is in the background of the following facts:

Complainant Kamlesh Lula ran and managed a Jewellery shop under the name and style Vishandas S. Jewellers. It is situated in section No.35 at Ulhasnagar. The shop was looked after by the complainant Kamlesh and his brothers Shankar and Laxman. It was a joint family business. The shop was on the ground floor of the building and Kamlesh and his family and brothers were staying on the first floor of the same building. There

is an entrance to the shop from the residential premises of the complainant.

2. On 10.6.1997, the shop was opened by Kamlesh as usual. At 8.40 pm, the complainant's brother Laxman went upstairs to perform Puja. The deceased Shankar was at home on the first floor. At 8.45pm, three persons entered the shop. One of them stood near the gate of the shop to keep watch. The second person took out a revolver and the third person i.e, the accused appellant entered the shop with a rampuri knife. He showed the rampuri knife to the complainant. The complainant Kamlesh started shouting for help and, therefore, his brothers Laxman and deceased Shankar came down in the shop. They saw the accused-appellant with a knife. Therefore, both of them surrounded and apprehended the accused. The accused started abusing. Scuffle was there. At that time, this accused gave a blow on the navel of the complainant. Laxman had caught the accused and, therefore, the accused bit on the hand of Laxman and during that process, the accused stabbed Shankar in the stomach and left side chest. 3 - 4 injuries were there on the body of Shankar but Kamlesh and Laxman caught this accused and overpowered him.

3. Hearing the shouts, public and other relatives came. The other accused i.e., one having revolver and the other standing at the gate ran away and disappeared

in the darkness but those accused were caught on the spot. In the scuffle, they had also received minor injuries.

4. Shankar and his brothers were immediately admitted in a hospital at Ulhasnagar. In the meantime, the police came and the accused was taken into custody. Shankar died in the hospital on 11.6.1997 at 2.30am. Then FIR was registered, investigation was made. Inquest panchanama was done as to the body of Shankar. It was subjected to postmortem also. The spot panchanama was drawn. The blood stained Rampuri knife was seized. All the incriminating articles were recovered. On 11.6.1997, the accused appellant was formally arrested after he was discharged from the hospital. His blood stained clothes were recovered. Statements of witnesses were recorded. In this background the accused came to be tried.

5. The trial Court accepted the prosecution case and convicted this accused for the aforesaid offences and hence, this appeal.

6. It was tried to be contended by the learned Advocate for the accused that the evidence against the accused was not sufficient to prove his guilt beyond reasonable doubt. We do not find anything to support this contention. The accused was caught on the spot.

PW4 i.e., Laxman and Kamlesh, who have given evidence in the Court have identified the accused-appellant as a person entering the shop with the Rampuri knife and inflicting stab wounds upon the deceased Shankar. In the cross-examination of Kamlesh and Laxman, the accused could not bring anything on record to create doubt about their veracity. In his statement under section 313 the accused could not give any explanation about his presence at the spot. Similarly, there was no explanation from the accused about the blood stained clothes recovered from him and the injuries on his person.

7. The medical evidence about the injuries suffered by the deceased was brought on record by examining PW12 Dr.Malik. He found one stab injury on the left axilla of the deceased Shankar. Then another stab wound 2" above and 1" lateral to left anterior superior ileac spine, third stab injury behind injury No.2, fourth small stab injury one is below and one is medial to the anterior superior ileac spine. Shankar was admitted in the hospital. He was bleeding severely and he died on the next day. All those injuries were ante-mortem. In the cross-examination, nothing is there to disprove the Doctor on any count.

8. About the arrest of the accused on the spot, PW13 PSI Rafiq Shaikh has stated that this accused was

found on the spot in an injured condition. He was taken to the hospital. As stated above, the evidence of PW4 Laxman has almost gone unchallenged in the sense that there is nothing in the cross-examination to create doubt about the veracity of this witness. There was no question of holding identification parade about this accused who was caught on the spot. Evidence of Kamlesh also fully corroborates the evidence of Laxman. There is specific role attributed to this accused about inflicting the injuries on Shankar and the manner in which the accused was caught on the spot and was handed over to the police at the same time and date. There was no holding of Test Identification Parade for this accused so far as Kamlesh or Laxman is concerned because he was nabbed on the spot. FIR lodged by Kamlesh fully corroborates the version of Kamlesh.

9. Postmortem report is proved by PW5. There is no challenge to the report and cause of death.

10. The clothes of Shankar were recovered by the police constable on 11.6.1997 and a panchanama prepared which is proved by PW6 Dattatraya Murude. It was a white shirt and an ash coloured pant. The clothes were in torn condition and were stained with blood. PW6 identified those clothes as articles 6 and 7. The torn condition of the shirt i.e., cut mark fully proves the case of the prosecution that Rampuri knife was used for

inflicting the injury.

11. As against this and all the incriminating circumstances, the trial Court put questions to the accused under section 313 of the Criminal Procedure Code and the accused pleaded ignorance to all the questions. He has no explanation at all to offer how he happened to be in the shop of the complainant and how he happened to be arrested on the spot. 82 questions were put to him but his answers are either in the negative or pleading ignorance. It is clear that this is a fool proof case with no chance of escape for the accused. The trial Court was fully justified in convicting him and therefore, the following order is passed:

O R D E R

(i) The Appeal is dismissed.

(ii) The conviction and sentence imposed upon the accused is maintained.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)